

AMENDED IN ASSEMBLY MARCH 4, 2002

**SENATE BILL**

**No. 1189**

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**Introduced by ~~Committee on Governmental Organization~~  
(~~Senators Perata (Chair), Chesbro, Dunn, Karnette, Machado,~~  
~~Soto, and Vincent)~~  
(~~Coauthor: Senator Burton~~) *Senators Costa and Perata***

March 12, 2001

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~~An act to amend Sections 25503 and 25503.1 of the Business and Professions Code, relating to alcoholic beverages. An act to amend Section 25503.6 of the Business and Professions Code, relating to alcoholic beverages.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1189, as amended, ~~Committee on Governmental Organization~~ Costa. Alcoholic beverages: licensees: advertising restrictions.

*Existing law generally prohibits a manufacturer of alcoholic beverages and a winegrower from paying, crediting, or compensating a retailer for advertising or pay or giving anything of value for the privilege of placing a sign or advertisement with a retail licensee. It authorizes, as an exception, the holder of a beer manufacturer's or winegrower's license, or a distilled spirits manufacturer or a distilled spirits manufacturer's agent, to purchase advertising space and time from, or on behalf of, an on-sale retail licensee, under certain conditions, if the on-sale retail licensee is the owner, manager, agent, assignee, or major tenant of a specified facility.*

*This bill would extend that exception to an on-sale licensee who is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or the major tenant of the owner of an outdoor stadium with a fixed seating capacity in excess of 1,500 seats located in Tulare County*

or a motorsports entertainment complex, as described, in San Bernardino County.

*This bill would make findings regarding the need for special legislation.*

~~Existing law generally prohibits a manufacturer of alcoholic beverages and a winegrower from paying, crediting, or compensating a retailer for advertising or paying or giving anything of value for the privilege of placing a sign or advertisement with a retail licensee. Under these provisions, these persons may not pay, credit, or compensate a retailer for advertising, display, or distribution service in connection with the advertising and sale of distilled spirits.~~

~~This bill would make that provision also applicable to the advertising and sale of beer.~~

~~Existing law provides specific exceptions to these advertising prohibitions in connection with off-sale retail licensees.~~

~~This bill would make those exceptions applicable to all retail licensees.~~

Existing law makes it a misdemeanor for a licensee, subject to the provisions of the bill, to violate existing provisions relating to the purchase of that advertising space or time.

This bill would impose a state-mandated local program by expanding the licensees subject to these criminal provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 ~~SECTION 1. Section 25503 of the Business and Professions~~
- 2 ~~SECTION 1. Section 25503.6 of the Business and Professions~~
- 3 ~~Code is amended to read:~~
- 4 25503.6. (a) Notwithstanding any other provision of this
- 5 chapter, a beer manufacturer, the holder of a winegrower's license,
- 6 or a distilled spirits manufacturer, or distilled spirits
- 7 manufacturer's agent may purchase advertising space and time

1 from, or on behalf of, an on-sale retail licensee subject to all of the  
2 following conditions:

3 (1) The on-sale licensee is the owner, manager, agent of the  
4 owner, assignee of the owner's advertising rights, or the major  
5 tenant of the owner of any of the following:

6 (A) An outdoor stadium or a fully enclosed arena with a fixed  
7 seating capacity in excess of 10,000 seats located in Sacramento  
8 County.

9 (B) A fully enclosed arena with a fixed seating capacity in  
10 excess of 18,000 seats located in Orange County or Los Angeles  
11 County.

12 (C) An outdoor stadium or fully enclosed arena with a fixed  
13 seating capacity in excess of 8,500 seats located in Kern County.

14 (D) An exposition park of not less than 50 acres that includes  
15 an outdoor stadium with a fixed seating capacity in excess of 8,000  
16 seats and a fully enclosed arena with an attendance capacity in  
17 excess of 4,500 people, located in San Bernardino County.

18 (E) An outdoor stadium with a fixed seating capacity in excess  
19 of 10,000 seats located in Yolo County.

20 (F) An outdoor stadium and a fully enclosed arena with fixed  
21 seating capacities in excess of 10,000 seats located in Fresno  
22 County.

23 (G) An athletic and entertainment complex of not less than 50  
24 acres that includes within its boundaries an outdoor stadium with  
25 a fixed seating capacity of at least 8,000 seats and a second outdoor  
26 stadium with a fixed seating capacity of at least 3,500 seats located  
27 within Riverside County.

28 (H) *An outdoor stadium with a fixed seating capacity in excess*  
29 *of 1,500 seats located in Tulare County.*

30 (I) *A motorsports entertainment complex of not less than 50*  
31 *acres that includes within its boundaries an outdoor speedway*  
32 *with a fixed seating capacity of at least 50,000 seats, located*  
33 *within San Bernardino County.*

34 (2) The outdoor stadium or fully enclosed arena described in  
35 paragraph (1) is not owned by a community college district.

36 (3) The advertising space or time is purchased only in  
37 connection with the events to be held on the premises of the  
38 stadium or arena owned by the on-sale licensee.

39 (4) The on-sale licensee serves other brands of beer distributed  
40 by a competing beer wholesaler in addition to the brand

1 manufactured or marketed by the beer manufacturer, other brands  
2 of wine distributed by a competing wine wholesaler in addition to  
3 the brand produced by the winegrower, and other brands of  
4 distilled spirits distributed by a competing distilled spirits  
5 wholesaler in addition to the brand manufactured or marketed by  
6 the distilled spirits manufacturer or distilled spirits manufacturer's  
7 agent that purchased the advertising space or time.

8 (b) Any purchase of advertising space or time pursuant to  
9 subdivision (a) shall be conducted pursuant to a written contract  
10 entered into by the beer manufacturer, the holder of the  
11 winegrower's license, the distilled spirits manufacturer, or the  
12 distilled spirits manufacturer's agent and the on-sale licensee.

13 (c) Any beer manufacturer or holder of a winegrower's license,  
14 any distilled spirits manufacturer, or any distilled spirits  
15 manufacturer's agent who, through coercion or other illegal  
16 means, induces, directly or indirectly, a holder of a wholesaler's  
17 license to fulfill all or part of those contractual obligations entered  
18 into pursuant to subdivision (a) or (b) shall be guilty of a  
19 misdemeanor and shall be punished by imprisonment in the county  
20 jail not exceeding six months, or by a fine in an amount equal to  
21 the entire value of the advertising space, time, or costs involved in  
22 the contract, whichever is greater, plus ten thousand dollars  
23 (\$10,000), or by both imprisonment and fine. The person shall also  
24 be subject to license revocation pursuant to Section 24200.

25 (d) Any on-sale retail licensee, as described in subdivision (a),  
26 who, directly or indirectly, solicits or coerces a holder of a  
27 wholesaler's license to solicit a beer manufacturer, a holder of a  
28 winegrower's license, a distilled spirits manufacturer, or a distilled  
29 spirits manufacturer's agent to purchase advertising space or time  
30 pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor  
31 and shall be punished by imprisonment in the county jail not  
32 exceeding six months, or by a fine in an amount equal to the entire  
33 value of the advertising space or time involved in the contract,  
34 whichever is greater, plus ten thousand dollars (\$10,000), or by  
35 both imprisonment and fine. The person shall also be subject to  
36 license revocation pursuant to Section 24200.

37 (e) For the purposes of this section, "beer manufacturer"  
38 includes any holder of a beer manufacturer's license, any holder  
39 of an out-of-state beer manufacturer's certificate, or any holder of  
40 a beer and wine importer's general license.



SEC. 2. The Legislature hereby finds and declares that a special statute is necessary and that a general statute cannot be made applicable, within the meaning of Section 16 of Article IV of the California Constitution, because of unique circumstances and concerns applicable to certain facilities in Tulare County and San Bernardino County.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Code is amended to read:

~~25503. No manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of that person, may do any of the following:~~

~~(a) Deliver, directly or indirectly, the possession of any alcoholic beverages to any on-sale or off-sale licensee under an agreement of consignment whereby title to the alcoholic beverages is retained by the seller or whereby the licensee receiving the alcoholic beverages has the right at any time prior to sale to relinquish possession to or return them to the original seller.~~

~~(b) Give, directly or indirectly, any licensee or any person any alcoholic beverages as free goods as a part of any sale or transaction involving alcoholic beverages.~~

~~(c) Give secret rebates or make any secret concessions to any licensee or the employees or agents of any licensee, and no licensee shall request or knowingly accept from another licensee secret rebates or secret concessions.~~

~~(d) Give or furnish, directly or indirectly, to any employee of any holder of a retail on-sale or off-sale license only anything of value for the purpose or with the intent to solicit, acquire, or obtain the help or assistance of the employee to encourage or promote either the purchase or the sale of the alcoholic beverage sold or manufactured by the licensee giving or furnishing anything of value, and any employee who accepts or acquires anything of~~

1 ~~value contrary to the provisions of this subdivision is guilty of a~~  
2 ~~misdemeanor.~~

3 ~~(e) Willfully or knowingly discriminate, in the same trading~~  
4 ~~area, directly or indirectly, in the price of any brand of distilled~~  
5 ~~spirits sold to different retail licensees purchasing under like terms~~  
6 ~~and conditions.~~

7 ~~(f) Pay, credit, or compensate a retailer or retailers for~~  
8 ~~advertising, display, or distribution service in connection with the~~  
9 ~~advertising and sale of distilled spirits or beer.~~

10 ~~(g) Furnish, give, lend, or rent, directly or indirectly, to any~~  
11 ~~person any decorations, paintings, or signs, other than signs~~  
12 ~~advertising their own products as permitted by Section 25611.1.~~

13 ~~(h) Pay money or give or furnish anything of value for the~~  
14 ~~privilege of placing or painting a sign, advertisement, or window~~  
15 ~~display, on or in any premises selling alcoholic beverages at retail.~~

16 ~~SEC. 2. Section 25503.1 of the Business and Professions~~  
17 ~~Code is amended to read:~~

18 ~~25503.1. (a) Notwithstanding any other provision in this~~  
19 ~~division, any manufacturer, winegrower, manufacturer's agent,~~  
20 ~~rectifier, distiller, bottler, importer, or wholesaler, or any officer,~~  
21 ~~director, or agent of that person is authorized:~~

22 ~~(1) Only in connection with alcoholic beverages manufactured,~~  
23 ~~produced or sold by that licensee, to install, service, and set up~~  
24 ~~window displays, promotional materials, and temporary floor~~  
25 ~~displays holding merchandise in the premises of a retail licensee.~~

26 ~~(2) Only in connection with alcoholic beverages manufactured,~~  
27 ~~produced, or sold by that licensee, to furnish, give, lend, rent, or~~  
28 ~~sell decorations and decorative materials, including holiday~~  
29 ~~decorations, paintings, and pictures, to a retail licensee for use in~~  
30 ~~the windows and elsewhere in the interior of the retail premises in~~  
31 ~~connection with advertising and promotional material or displays~~  
32 ~~in the premises of the retailer; provided, that the advertising and~~  
33 ~~promotional material shall have no intrinsic value other than as~~  
34 ~~advertising and that the total original cost of all the decorations and~~  
35 ~~decorative materials, including holiday decorations, paintings,~~  
36 ~~and pictures furnished by any licensee and in use at any one time~~  
37 ~~in any one retail premise shall not exceed the amount established~~  
38 ~~by rules of the department; and provided, that the licensee or any~~  
39 ~~officer, director, or agent of the licensee shall not, directly or~~  
40 ~~indirectly, pay or credit the retailer for the display of the~~

1 ~~decorations or decorative materials or for any expense incidental~~  
2 ~~to their operation.~~

3 ~~(3) To furnish, give, lend, rent, or sell to a retailer who sells the~~  
4 ~~alcoholic beverages of the licensee, newspaper cuts, mats, or~~  
5 ~~engraved blocks for use in the retailer's advertisements relating to~~  
6 ~~the alcoholic beverages.~~

7 ~~(b) Notwithstanding any other provision in this division, any~~  
8 ~~holder of a wholesaler's license may manufacture, distribute, sell,~~  
9 ~~or rent any lawful product to any person engaged in operating,~~  
10 ~~owning, or maintaining any retail premises where alcoholic~~  
11 ~~beverages are sold; provided, however, that the products are sold~~  
12 ~~or rented by the holder of the wholesaler's license to the licensee~~  
13 ~~at a price not less than the current market price for the product; and~~  
14 ~~provided, further, that the manufacturer and importer of alcoholic~~  
15 ~~beverages shall be controlled by the other applicable provisions of~~  
16 ~~this division.~~

17 ~~SEC. 3.—No reimbursement is required by this act pursuant to~~  
18 ~~Section 6 of Article XIII B of the California Constitution because~~  
19 ~~the only costs that may be incurred by a local agency or school~~  
20 ~~district will be incurred because this act creates a new crime or~~  
21 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
22 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
23 ~~the Government Code, or changes the definition of a crime within~~  
24 ~~the meaning of Section 6 of Article XIII B of the California~~  
25 ~~Constitution.~~